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NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

TAMMÉ SHINSHURI, Plaintiff and Appellant, v. CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD, Defendant and Respondent; CALIFORNIA PHYSICANS SERVICES, Real Party in Interest and Respondent.	C086987 (Super. Ct. No. 34-2017-80002651)

After she was fired by real party in interest California Physicians Services, dba Blue Shield of California (Blue Shield), appellant Tammé Shinshuri filed an unsuccessful application for unemployment insurance benefits with the Employment Development Department (EDD). After an unsuccessful hearing before an administrative law judge

(ALJ), she appealed to respondent California Unemployment Insurance Appeals Board (Board). The Board ruled against her, and she filed the instant administrative mandamus petition. The trial court upheld the Board's decision, and Shinshuri timely appealed from the judgment denying her petition.

We uphold the trial court's central finding that because Shinshuri had been working at her own foundation she did not meet the statutory definition of "unemployed" and therefore was not eligible for unemployment benefits. We disagree with her ancillary evidentiary and procedural claims, and affirm the judgment denying her petition.

BACKGROUND

Blue Shield fired Shinshuri in January 2017 after an internal compliance audit concluded that she had engaged in incompatible activities by operating the Shinshuri Foundation. Blue Shield then opposed her efforts to obtain unemployment benefits.

Administrative Procedure

On January 31, 2017, EDD sent Shinshuri a denial of benefits, finding that she had violated a reasonable employer rule (Blue Shield's conflict of interest code) and that because she worked at her foundation full time and therefore was not unemployed. When Shinshuri appealed, these two grounds were given separate case numbers, but were consolidated for and considered at one appeal hearing.

In her written appeal as to EDD's second ground, Shinshuri contended that she was volunteering (i.e., working without pay) at her own foundation and further contended that she was unemployed and had no other income.[1]

At the hearing before the ALJ, Shinshuri testified her foundation was a nonprofit "social purpose corporation" and a "start up." During Blue Shield's conflict of interest compliance review, Shinshuri had been asked in writing whether she was receiving

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[1] No issue about EDD's first ground is raised by this appeal, although Blue Shield's brief pointlessly discusses the conflict of interest issue at length.

"compensation" for her activity with her foundation, and she had answered "Yes." Shinshuri denied receiving any compensation when she testified, adding that she was the president of her foundation. She explained that an associated school (Oracle of Truth Academy) had six teachers who also were unpaid volunteers. The school had six students and was trying to obtain accreditation as a postsecondary private school. An online foundation profile stated it had 20 to 50 employees and more than two general management employees. A corporate registry described it as a domestic stock corporation. Shinshuri testified its focus was what she called "business philanthropy." Shinshuri testified that after she separated from Blue Shield she was working at her foundation (and its associated school) six hours in the evening and on weekends six to eight hours. When confronted with her prior written answer that she was receiving compensation, she testified "we're a *for profit entity*" (italics added) but one that was not yet making money, and she had only received "donations to the college. Not like a salary compensation." "I'm not receiving compensation. . . . I'm volunteering my time, *but receivables came in through donations*." (Italics added.) In response to a question by the ALJ, Shinshuri testified she would not have any income to report on a 1099 tax form or on a W-2 form as a result of her volunteer work.

The ALJ found against Shinshuri as to receipt of compensation, disbelieving her testimony at the hearing and crediting her earlier written statement that she was receiving compensation. Specifically, the ALJ found as follows:

> "[Shinshuri] testified under oath that she develops curricula for the Shinshuri Foundation and that she receives no wages. She further testified that she volunteers her time to the foundation. On December 1, 2016, [Shinshuri] completed a conflict of interest form for her former employer. She responded 'Yes' to the question, 'Are you receiving compensation for performing the outside activity?' Her response on the conflict of interest form was given greater weight. At the time she completed this form, questions concerning the foundation and violations of work policies were being raised. [Shinshuri] at that time was motivated to provide her employer accurate information about her association with the foundation in order to preserve her employment. After her discharge,

> circumstances changed and it was in her best interest to testify that she performed no services and received no compensation. This testimony was deemed self-serving and not believed."

The ALJ's ruling discussed the statutory definition of unemployed (which we address *post*) and found Shinshuri "worked at least thirty hours Monday through Friday and on the weekends and was paid wages. The claimant thus was not 'unemployed' and therefore not eligible for benefits under [Unemployment Insurance] [C]ode section 1252 beginning January 8, 2017."[2]

When Shinshuri appealed to the Board, she tendered new evidence which she described as her "2016 Tax Return, Employee Agreement, and Letter of Intent with Shinshuri Foundation." She claimed she had not presented this evidence earlier because she had brought evidence to support what she thought was the main claim of employee misconduct. With a request to expedite the Board hearing, Shinshuri tendered further evidence, consisting of more recent public assistance documents, to show that she was in dire financial straits.

Blue Shield also tendered new evidence in the form of a 2016 pay summary for Shinshuri and her offer letter, job application, and related documents. The Board sent copies of Blue Shield's new evidence to Shinshuri, with a transmittal letter stating the Board could not consider it absent "a good reason" why it was not submitted to the ALJ. The letter added that if the Board considered the new evidence, Shinshuri would have an opportunity to respond. The record does not show that the Board sent any letter to Blue Shield regarding Shinshuri's new evidence. But a letter addressed to both parties stated that if new evidence was presented to the Board the party had to explain its importance and why it was not submitted earlier.

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[2] Further undesignated statutory references are to the Unemployment Insurance Code.

The Board denied Shinshuri's appeal. In part its decision states:

> "Although the claimant previously told the employer she was being paid, the claimant now claims she is not. The claimant testified she hopes the agency to be profitable in the future.
>
> "Code section 1252 defines a person as unemployed if the person performs no services and no wages are payable. The claimant definitely performed services. Whether or not those services were immediately compensated, the work is done with the intent that ultimately the agency will be profitable."

The Board declined to consider Shinshuri's proposed new evidence because she gave no "compelling" reason why the evidence was not submitted at the ALJ hearing, citing a prior Board precedential decision on the subject. The Board did not reference Blue Shield's proposed new evidence in its decision.

Mandamus Action

Shinshuri filed the instant mandamus petition on July 27, 2017, and later filed an amended petition. She attached evidence that had not been introduced at the administrative level. The amended petition did not cite to the administrative record, and raised issues unrelated to unemployment insurance (e.g., discrimination).

Both Blue Shield's answer and the Board's answer pointed out that Shinshuri had failed to provide appropriate record citations, and the Board also urged the court to disregard the new evidence Shinshuri had tendered.

The trial court chose to address the merits. After a hearing, the court confirmed a seven-page tentative ruling, adding a short discussion regarding the treatment of stock shares as wages. Shinshuri purports to summarize what arguments she made at the hearing, but there is no reporter's transcript or settled statement in the record.

Shinshuri then filed objections to a proposed order and judgment that had been submitted to her by the Board's counsel via e-mail for approval as to form, attacking the merits of the trial court's decision. The trial court signed and filed a judgment denying Shinshuri's amended petition.

The trial court exercised its independent judgment on the evidence in the administrative record and upheld the denial of benefits as follows:

> "First, the evidence . . . shows that petitioner performed services for the Shinshuri Foundation 6 hours a day on weekdays and 6-8 hours on the weekends. In addition to her duties as corporate president and founder, Petitioner is a teacher, and develops courseware for the Oracles of Truth Academy. [Citation.]
>
> "Second, the evidence . . . supports the finding that Petitioner was paid 'wages' for those services . . . .
>
> "Petitioner testified . . . that she performs the services for the Shinshuri Foundation as a volunteer and receives no payment. *However, there is other conflicting evidence in the record. Namely, Petitioner indicated otherwise to her employer*. In addition to this conflicting evidence, other discrepancies in the record exist regarding Petitioner's description of the Shinshuri Foundation.
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> "[T]he Court agrees with the ALJ that Petitioner's statements on the Conflict of Interest form are entitled to greater weight [than her testimony]."
>
> "[¶] . . . [¶]
>
> "[F]or example, Petitioner averred at the administrative hearing that she was not on the payroll and received no compensation, but then admitted that income came to the Shinshuri Foundation through 'donations.' [Citation.] . . . Additionally, the Shinshuri Foundation online profile states that it has between 20 and 50 employees. [Citation.] However, at the administrative hearing, Petitioner testified that there are only six teacher volunteers at the organization. [Citation.]
>
> "Petitioner's argument that the Conflict of Interest form limited her from providing further detail and explaining that she, in fact, received shares of stock is unavailing. The form indicates . . . that Petitioner . . . was afforded ample opportunity to describe her work at the Shinshuri Foundation. [Citation.] Additionally, the . . . form specifically states: 'Please provide any other information that may be useful in assessing the situation.' [Citation.] Petitioner declined to do so." (Italics added)

The trial court alternatively found that the stock shares Shinshuri received qualified as wages. The court rejected Shinshuri's claim that the Board erred by not considering her new evidence.

Shinshuri timely filed her notice of appeal.

DISCUSSION

I

Standard of Review

Our Supreme Court has explained the proper standard of review by the trial court and by this court in unemployment insurance benefit cases as follows:

> "In reviewing a decision of the Board on a petition for writ of administrative mandamus, ' "the superior court exercises its independent judgment on the evidentiary record of the administrative proceedings and inquires whether the findings of the administrative agency are supported by the weight of the evidence." ' [Citation.] On review of that decision, an appellate court determines whether the independent 'findings and judgment of the [superior] court are supported by substantial, credible and competent evidence' in the administrative record. [Citations.] '[A]ll conflicts must be resolved in favor of the respondent and all legitimate and reasonable inferences made to uphold the superior court's findings; moreover, when two or more inferences can be reasonably deduced from the facts, the appellate court may not substitute its deductions for those of the superior court.' [Citation.]" (*Paratransit, Inc. v. Unemployment Ins. Appeals Bd.* (2014) 59 Cal.4th 551, 562 (*Paratransit*).)

To the extent Shinshuri raises purely legal issues (such as the meaning of statutes, regulations, or rules of court), we review those issues de novo. (See *Ponce v. Wells Fargo Bank* (2018) 21 Cal.App.5th 253, 261.)

Generally speaking Shinshuri, as the applicant, had the burden to establish that she was eligible for unemployment benefits. (See *Windigo Mills v. Unemployment Ins. Appeals Bd*. (1979) 92 Cal.App.3d 586, 599 (*Windigo Mills*).)

The fact that Shinshuri represents herself does not relieve her of the duty to follow appellate procedural rules. (See *Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984-985.) We decline to address factually unsupported or legally undeveloped claims. (See *In re Marriage of Nichols* (1994) 27 Cal.App.4th 661, 672, fn. 3, 673.)

II

Whether Shinshuri was Unemployed

The trial court found that Shinshuri's work for her foundation disqualified her from receiving unemployment benefits. We uphold this finding.

A person is deemed to be " 'unemployed' in any week" if any one of various statutorily enumerated conditions are shown, stated in the negative, including: "Any week during which he or she performs no services and with respect to which no wages are payable to him or her." (§ 1252, subd. (a)(1).) Section 1252, subdivision (c) provides:

> "For the purposes of this section only 'wages' includes any and all compensation for personal services whether performed as an employee or as an independent contractor or as a juror or as a witness, but does not include any payment received by a member of the National Guard or reserve component of the armed forces for inactive duty training, annual training, or emergency state active duty."

The trial court also considered a different definition of wages, contained in section 926, that provides in relevant part:

> "Except as otherwise provided *in this article* 'wages' means all remuneration payable to an employee for personal services . . . and the reasonable cash value of all remuneration payable to an employee in any medium other than cash." (§ 926, italics added.)

The italicized phrase raises a threshold applicability question. Section 926 is in a chapter and "article" of the code (Division 1, Part 1, Chapter 4, Article 2) pertaining to wages as they are used to determine unemployment insurance contributions, that is *payments to* the unemployment fund (and other funds). (See § 131.) Eligibility for benefits, that is, *payments from* the unemployment fund to individual unemployed workers (see § 128), is governed by a different chapter and article (Division 1, Part 1, Chapter 5, Article 1) of the code. The article including section 1252, as we have just explained, has its own clear definition of wages that states it is applicable to "this

section." (§ 1252, subd. (c).) The parties do not explain how the section 926 definition could apply to benefit eligibility determinations rather than the section 1252 definition, and we do not see that it does.[3]

As quoted *ante*, the relevant definition of wages from section 1252 "includes *any and all compensation* for personal services whether performed as an employee or as an independent contractor or as a juror or as a witness, but does not include" specified kinds of compensation. (§ 1252, subd. (c), italics added.) The use of "any and all" means we must construe compensation broadly. (See *Natkin v. California Unemployment Ins. Appeals Bd*. (2013) 219 Cal.App.4th 997, 1004.) Further, because the Legislature included specific exceptions in this definition--none of which even arguably apply to Shinshuri's situation--we should not infer others were intended. (See *Schweisinger v. Jones* (1998) 68 Cal.App.4th 1320, 1326 ["*expressio unius est exclusio alterius*"].)

The trial court did not believe Shinshuri's testimony. The record supports the finding that she worked practically full time at her foundation, as she testified she worked nearly full days and weekends. Her claim that she only worked "12-14 hours per week" is not the natural way to read her testimony, and certainly not a reading that either the Board or trial court was compelled to adopt. As for whether she received wages as defined, she admitted in writing that she had received compensation for that work, the very term used in section 1252, subdivision (c). It was rational for the Board and the court to accept her prior admission at face value, although other inferences were possible. Further, Shinshuri testified her foundation or its related school received donations. The court characterized this as income to her foundation, although she had denied the donations were compensation to her. That, too, was a rational credibility decision by the court.

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[3] Given the explicit definition provided by section 1252, we decline to consider other definitions discussed in the briefing.

It is true that mere disbelief of a witness's testimony does not provide substantial evidence of the *contrary* (see *Beck Development Co. v. Southern Pacific Transportation Co.* (1996) 44 Cal.App.4th 1160, 1204-1205); however, that is not the situation here. As Shinshuri acknowledges, the court also considered the evidence of Shinshuri's prior inconsistent written statement that she *had* received compensation and gave a rational reason for crediting that prior statement over Shinshuri's hearing testimony. That is sufficient to prove the fact in question. Although Shinshuri contends her hearing testimony provided an alternative interpretation of her prior written statement, that is of no moment: "Provided the trier of the facts does not act arbitrarily, [it] may reject *in toto* the testimony of a witness, even though the witness is uncontradicted." (*Hicks v. Reis* (1943) 21 Cal.2d 654, 659-660.) In this case, Shinshuri effectively contradicted herself.

Shinshuri and the Board discuss cases concerning when stock shares can or cannot be deemed "wages" for unemployment benefit eligibility, as well as the stocks' valuation. But contrary to the way Shinshuri summarizes the trial court's written ruling, the court's finding that receipt of the stock equated to receipt of wages was an alternate holding. Therefore, even if we agreed with Shinshuri that the court erred regarding stock shares, that would not change the judgment. (See *Minor v. Sonoma County Employees Retirement Bd.* (1975) 53 Cal.App.3d 540, 544 ["the finding is not essential to the judgment in any event, and therefore is not prejudicial even if erroneous"]; 9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, §§ 348, 355.)

Shinshuri appears to rely on a regulation--albeit one seemingly tied to section 926, governing contributions, not section 1252, governing benefit eligibility--that excludes from the definition of wages "Returns on the capital investments of a limited partner as distinguished from remuneration for personal services of the limited partner." (Cal. Code Regs., tit. 22, § 926-2(d).) The trial court found no evidence that Shinshuri was a limited partner or that her foundation was a limited partnership and Shinshuri points to no such evidence in the record.

In short, Shinshuri's brief largely reargues the evidence, but we are not at liberty to reweigh the evidence, and in particular will not reweigh the trial court's credibility findings. (See *Paratransit, supra,* 59 Cal.4th at p. 562.)

III

Evidence at the Hearing

Shinshuri claims that the ALJ (and inferentially the Board and trial court) prejudicially relied on "spurious" and hearsay evidence. We disagree.

At the ALJ hearing, at the conclusion of Blue Shield's presentation, Shinshuri stated that some of the exhibits submitted by Blue Shield's representative were "inaccurate;" the ALJ told her she would have a chance to address that if necessary, then Shinshuri gave her testimony. She never raised the issue again and never identified which exhibits she thought were inaccurate. Nor did she ever make a hearsay objection. At the end of the hearing the ALJ invited both sides to make closing comments. Shinshuri again did not challenge any of the exhibits, but merely argued she had not engaged in any conflict of interest while working for Blue Shield.

On appeal, Shinshuri faults the ALJ for not explicitly asking her which exhibits she objected to and why, but that does not preserve her objections (including hearsay objections). (See *Clary v. City of Crescent City* (2017) 11 Cal.App.5th 274, 302.)

Further, the citations to evidence she provides are to apparent printouts from Internet pages about the Shinshuri Foundation or about Shinshuri herself. Shinshuri has not clearly explained why this evidence was inadmissible. "The appeals board and its representatives and administrative law judges are not bound by common law or statutory rules of evidence or by technical or formal rules of procedure but may conduct the hearings and appeals in such manner as to ascertain the substantial rights of the parties." (§ 1952.) "Except as otherwise prohibited by law, any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or

statutory rule which might make improper the admission of such evidence over objection in civil actions." (Cal. Code Regs., tit. 22, § 5062(e).) Thus, evidence that might have been excluded (after a timely and specific objection) at a civil trial may be considered at an unemployment insurance hearing if it has some reasonable foundation. (See *Windigo Mills*, *supra*, 92 Cal.App.3d at pp. 597-598; *Thornbrough v. Western Placer Unified School Dist.* (2013) 223 Cal.App.4th 169, 192-193 [similar evidentiary informality applies under the Administrative Procedures Act]; see Gov. Code, § 11513, subd. (c).)

Tellingly, the only reference in the trial court's decision to any of these documents appears to be to the one that states the foundation has 20 to 50 employees, whereas Shinshuri testified there were only six. The court referenced that document to bolster its view that Shinshuri lacked credibility. As the Board notes, the court's decision did not hinge on any of those documents.

Although Shinshuri claims the documents provided a "prejudicial perspective" about her, she never explains how the exclusion of any or all of those documents would have changed the result. (Cf. Evid. Code, § 353, subd. (b); *Marmion v. Mercy Hospital & Medical Center* (1983) 145 Cal.App.3d 72, 99.) Further, as Blue Shield explains, in administrative proceedings "hearsay evidence may be used for the purpose of supplementing or explaining other evidence . . . ." (Gov. Code, § 11513, subd. (d) [but if a timely objection is interposed, hearsay *alone* cannot support a finding].) Here, the documents in question, if credited, helped explain the nature of the Shinshuri Foundation, although perhaps not in the way that Shinshuri would have preferred.

IV

New Evidence

Shinshuri contends the Board should have accepted new evidence she tendered and should not have accepted new evidence Blue Shield tendered. It appears she also contends the trial court should have accepted the new evidence she tendered. We

conclude that both the Board and the trial court properly declined to consider any evidence not produced at the hearing before the ALJ.

A. *Legal Standards*

In unemployment insurance benefit cases, at the ALJ hearing level, "A party appearing in a hearing shall have his or her evidence and witnesses and be ready to proceed." (Cal. Code Regs., tit. 22, § 5062(a).) On appeal to the Board, "An application to present new or additional evidence shall state the nature of the evidence, the materiality of such evidence, and the reasons why such evidence was not introduced at the hearing before the administrative law judge. If the new or additional evidence is documentary in nature, the applicant shall attach the evidence to the application. No such evidence shall be considered by the board unless the board admits it." (*Id*., § 5102(d).)

At the trial court level, "Before the court may properly consider evidence that was not presented at the administrative hearing, the petitioner must show the evidence could not have been produced below had reasonable diligence been exercised. (Code Civ. Proc., § 1094.5, subd. (e).) Determination of the question is within the discretion of the trial court; we will not disturb the exercise of that discretion unless it is manifestly abused. [Citation.]" (*Armondo v. Department of Motor Vehicles* (1993) 15 Cal.App.4th 1174, 1180.) The party offering new evidence to the trial court must "show that the new evidence could not have been produced at the administrative hearing, or in support of a renewed application for benefits, in the exercise of reasonable diligence. [Citations.]" (*Conrad v. Unemployment Ins. Appeals Bd.* (1975) 47 Cal.App.3d 237, 243.) "Public policy requires a litigant to produce all existing evidence on his behalf at the administrative hearing [citation]. Only where the record is augmented within the strict limits set forth in the statute is evidence on the main issues ever received in the superior court [citation]." (*Windigo Mills*, *supra*, 92 Cal.App.3d at p. 595.)

Thus, although the phrasing of the rule differs somewhat, in either of the above situations a party must give a good reason why proposed new evidence could not have

been produced earlier. A typical example would be evidence of some pertinent event that occurred *after* the administrative hearing. (See *Windigo Mills*, *supra*, 92 Cal.App.3d at p. 596-597 [the Legislature "meant to authorize the receipt of evidence of events which took place after the administrative hearing."].) This rule applies at the trial court level and the Board appeal level. (*Id*. at p. 598 ["we see no reason why evidence relevant to the agency decision should not be admitted in the superior court under the same rules as those governing the admissibility of evidence at the administrative hearing"].)

B. *Shinshuri's Proposed New Evidence*

Shinshuri seems to argue that because she tendered her request for new evidence in a procedurally proper manner (at least in her view), that the Board (and then the trial court) had to consider it. But following procedure in making the request does not excuse her from showing good cause for not presenting the evidence sooner.

The first tranche of new evidence Shinshuri tendered to the Board was not "new," inasmuch as it consisted of her 2016 tax return and documents allegedly defining her relationship with her foundation. Far from arguing that these documents had not been unavailable earlier, Shinshuri admitted that she had decided to focus her evidence before the ALJ at the first ground EDD gave for denying her benefits, that is, whether or not she violated a reasonable employer rule. This reflects a tactical decision, not good cause. Shinshuri's decision in that regard was adequate reason for the Board's decision--concurred in by the trial court--not to consider this new evidence.

Shinshuri contends that the public assistance documents she submitted in her second tranche did not exist at the time of the hearing. But she presents no developed argument why the Board or trial court had to consider this evidence, or what difference it likely would have made in resolving her claim for unemployment benefits. She does not show the disputed documents' ability to *independently* corroborate her claims.

Further, although Shinshuri contends the evidence would have helped her explain the inconsistency between her testimony and her prior written admission, Shinshuri has

not satisfied her duty, as the appellant, of explaining how any alleged error regarding evidence caused prejudice. (See *Paterno v. State of California* (1999) 74 Cal.App.4th 68, 106 (*Paterno*) [discussing the state constitutional and statutory rule requiring a showing of prejudice and holding "the appellant bears the duty of spelling out in his [or her] brief exactly how the error caused a miscarriage of justice"]; *Roman Catholic Bishop of San Jose v. Brown* (2013) 219 Cal.App.4th 484, 494 [applying rule of prejudice in a mandamus case]; cf. *Kazensky v. City of Merced* (1998) 65 Cal.App.4th 44, 67-68 [if a statement of decision in a mandamus case has an omission, " 'if the judgment is otherwise supported, the omission is harmless' " unless it infects other findings].)

C. *Blue Shield's Proposed New Evidence*

Blue Shield also tendered new evidence to the Board. However, contrary to Shinshuri's view, there is no indication in the record that the Board considered this evidence. The Board sent Shinshuri a letter containing copies of Blue Shield's evidence and with the statement that *if* the Board planned to consider Blue Shield's new evidence it would allow Shinshuri an opportunity to respond to it. The Board never did that. Nor does the Board's written decision reference Blue Shield's proposed new evidence. It was Shinshuri's burden, as the appellant, to demonstrate error in the judgment "and all intendments and presumptions are indulged in favor of its correctness. [Citations.]" (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133.) We cannot infer that the Board granted Blue Shield's request to consider its tendered new evidence.[4]

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[4] It is not clear why the record indicates the Board did not treat Shinshuri's tendered new evidence in the same procedural way it treated Blue Shield's tendered new evidence, such as by sending her proposed evidence to Blue Shield with an explanation that if it were considered Blue Shield would be given a chance to respond. Nor is it clear why the Board decision explains why the Board did not consider Shinshuri's tendered new evidence, but does not reference Blue Shield's tendered new evidence. But these anomalies do not demonstrate that the Board did consider Blue Shield's evidence.

Further, Shinshuri does not explain how Blue Shield's proposed new evidence (e.g., her pay summary, employment offer and employment agreement) likely would have made any difference, as it did not address what post-termination compensation she may have received. The failure to argue prejudice is fatal to this claim of error. (See *Paterno*, *supra*, 74 Cal.App.4th at pp. 105-106.)

V

Issuing the Judgment

Shinshuri contends the trial court prejudicially erred in connection with preparation and issuance of the judgment. We disagree.

In Shinshuri's objections to the judgment she partly contended that the court had rejected the Board's proposed judgment and order because the court wanted a separate order and judgment, not one document that was both an order and a judgment; when the Board complied, it did so too late.

In support of her claim, Shinshuri attached a letter from the Board's counsel to the trial court. This letter explains that counsel prepared one order and judgment because the court had directed counsel in writing to "prepare a formal order and judgment . . . submit *it* to opposing counsel for approval as to form; and thereafter submit *it* to the Court . . . ." (Italics added.) Counsel evidently tried to comply by preparing a single document, but the court clerk sent a notice to counsel stating: "The Court directed you to prepare [an] order and a *separate* judgment." (Italics added.) The Board's counsel then submitted separate documents, respectively containing a proposed order and a proposed judgment. Because they used the same language as the prior combined document, counsel did not think there was any reason to provide additional time for review as to form. In any event, Blue Shield's counsel had already approved the language and Shinshuri had already objected.

Shinshuri contends that the above circumstances violated California Rules of Court, rule 3.1312. That rule governs the procedure for the preparation and submission

of orders. But regardless of any mistakes that were made (or who made them), Shinshuri does not explain how she was prejudiced. The trial court denied her petition on the merits, and nothing in the form of the ensuing order and judgment changes that. It was Shinshuri's burden to explain how she was prejudiced by the claimed procedural error. (See *Paterno*, *supra*, 74 Cal.App.4th at pp. 105-106.) We do not see how any such error caused a miscarriage of justice.[5]

DISPOSITION

The judgment is affirmed. In light of our prior grant of Shinshuri's request for a fee waiver (see interim file), the nature of this case, and the interests of justice, each party shall bear its own costs on appeal. (See Cal. Rules of Court, rule 8.278(a)(5).)

/s/
Duarte, J.

We concur:

/s/
Blease, Acting P. J.

/s/
Hull, J.

[5] "Other arguments are simply overtaken or outflanked by resolution of the matters which we do discuss or do not warrant discussion because they are too fragmentary or obscure." (*Claypool v. Wilson* (1992) 4 Cal.App.4th 646, 659.)